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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/782,680	02/18/2004	Patrick Ladd	TWAR.005A	5211

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GAZDZINSKI & ASSOCIATES  
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11440 West Bernardo Court  
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EXAMINER
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PHAN, TUANKHANH D

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/782,680	<b>Applicant(s)</b> LADD ET AL.	
	<b>Examiner</b> Tuan Khanh Phan	<b>Art Unit</b> 2163	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-24, 34-61 and 65-69 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-24, 34-61 and 65-69 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

This Office Action is in response to the Election, filed on 10/09/2009. Claims 12-24, 34-61 and 65-69 are pending.

### ***Response to Arguments***

Applicant's arguments filed 6/18/2009 have been fully considered but they are not persuasive.

Issue: Applicant respectfully submits that none of the references cited by the Examiner, including Curran and/or Patki, teaches or suggests assembling the first, second, and third components into one or more applications configured to utilize the components. Nowhere does Curran teach or suggest assembling these components and a third component into one or more applications configured to utilize the components.

Response: The examiner respectfully disagrees with the applicant and submits that protocol modules (p 948, 3<sup>rd</sup> para, such existed a multiple component into a protocol) configured into one ore more protocol of quality of service provided by Currant (p 948, 3<sup>rd</sup> para); plus it can be supported by chameleon framework for broadcasting and serving multimedia streaming.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

a. Based on Supreme Court precedent and recent Federal Circuit decisions on

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the process claims in light of Bilski, the method claims or a § 101 process must (1) be tied to another statutory class (a particular machine or apparatus) or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. If neither of these requirements is met by the claim, the method is not a patent eligible process under § 101 and should be rejected as being directed to non-statutory subject matter. A method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim ***should positively recite*** the other statutory class (the thing or product) to which it is tied, ***for example*** by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state. Further, *"Identifying the apparatus" requires that the process claim or method claim explicitly recites the particular machine or apparatus, or recite a step that inherently involves the use of a particular machine or apparatus.*

For particular, the claims 12-20 and 50-54 are directed to non-statutory subject matter since claims 1-18 are directed to a method and do not tied to particular machine or apparatus.

b. Claims 21-23, 35-36 and 55-56 recites equipment; however the components of the equipment are merely software per se. Such equipment/system claims much recite physical structure thus enabling it to be properly categorized in one of the statutory categories of invention. Since the components of the equipment/system claims 21-23, 35-36 and 55-56 are software per se and do not contain any physical components, the

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systems cannot be categorized in one of the statutory categories of invention and is thus nonstatutory.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 12-21, 34-46 and 50-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over anticipated by Kevin Curran (The Use of Dynamically Reconfigurable Protocol Stacks for Streaming Multimedia to Mobile Devices; 2002 IEEE), in view of Patki et al. (US Pat. 6,944,185), hereinafter Patki.

Regarding claims 12, 21, 34, 37, 46 and 50-51, Curran discloses a method of developing the specific protocol useful for delivery of content from a first node of a network to a second node thereof, the method comprising (Figure 2; **from a first node client to a second node Multimedia Server**):

developing a first component adapted to communicate between said first and second nodes (i.e. **Chameleon Middleware allows communication between first and second entities**; Figure 2);

developing a second component adapted to process the content delivered to said second node; and developing a third component adapted to cooperate with at least one of said first and second components to control functions specific to said protocol (p.

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949, 2<sup>nd</sup> ¶; **the application allows data to be retrieved and processed such as audio or video file composition and the sending and receiving ends);**

assembling said first, second and third components into one or more applications configured to utilize said components (p. 948, 3<sup>rd</sup> para, disclosing a multiple of protocol modules configured altogether to run a protocol and support multimedia applications); and

providing said one or more applications to said second node via at least one multiplex transport stream (abstract; multiplex streaming from one device to another device via wireless [such as cell-phone] and wire-network is inherent).

While it is well known in the art that a device of Curran's disclosure could enable a user to control the playback function of content, Patki discloses a user control function of playback of said content.(col. 5, lines 60-64;). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Patki's disclosure into Curran's disclosure for the motivation of decoding media frames and providing playback appropriately.

Regarding claims 13, 38, and 65, Curran and in view of Patki disclose the method of Claim 12, Curran further discloses wherein said cooperation with at least one of said first and second components comprises accessing said first component to cause at least one message to be sent between said second node and said first node, said at least one message causing at least one corresponding function to be executed (**the communication between a client and a multimedia server is taken at least via the session manager**; Figure 2).

Regarding claims 14, 39, and 66, Curran and in view of Patki discloses the method of Claim 12, Curran further discloses wherein said act of developing said first component comprises developing a Java DataSource (**the framework of Java 2 Micro Edition can support Java DataSource**, p. 947, 2<sup>nd</sup> column, lines 28-30).

Regarding claims 17 and 42, Curran and in view of Patki disclose the method of Claim 14, Curran further discloses wherein said act of developing a first component comprises developing a DataSource component further adapted to setup a session and handshake or negotiate conditional access parameters (**setup a session and handshake are part of the session manager when request for data is being made by a client to a server**; Figure 2).

Regarding claims 18 and 43, Curran and in view of Patki disclose the method of Claim 14, Curran further discloses wherein said act of developing a first component comprises developing a DataSource component further adapted to specify the channel on which said content will be delivered (disseminating of media from a source to multiple destination in an oriented way is shown; p. 948 the Chameleon framework).

Regarding claims 19, 44 and 69, Curran and in view of Patki disclose the method of Claim 12, Curran further discloses wherein said act of developing a first component comprises adapting said first component to provide messaging in support of a plurality of functional modes in cooperation with said third component, said third component being adapted to provide said plurality of functional modes (a plurality of functional modes with a flexible protocol system allows the "dynamic selection, configuration of protocol modules to adapt to changing service properties", p. 948, 2<sup>nd</sup> column, 1<sup>st</sup> ¶).

Regarding claims 20, 45 and 69, Curran and in view of Patki disclose the method of Claim 12, Curran further discloses wherein said act of developing a second component further comprises developing a player component adapted for implementing said second component (it is inherent that a mobile device includes a media player).

Regarding claim 35, Curran and in view of Patki disclose the CPE of Claim 21, Curran further discloses wherein said CPE is further adapted to: receive said at least one application (Figure 2);

store said at least one application within a storage device of said CPE (Figure 2);  
and

run said application to configure said CPE according to a network-specific protocol implemented by said at least one application (Figure 2).

Regarding claim 36, Curran discloses the CPE of Claim 21, wherein said at least one application comprises an application configured with a network-specific protocol extension and wherein said CPE is further adapted to selectively allow a plurality of applications resident on said CPE to access said extension (i.e. a flexible protocol system allows the "dynamic selection, configuration of protocol modules to adapt to changing service properties", p. 948, 2<sup>nd</sup> column, 1<sup>st</sup> ¶).

Regarding claim 54, see the discussion of claim 36.

Regarding claims 15 and 40, while Java framework of Curran could support a Java handler, Curran does not explicitly disclose the method of Claim 14, wherein said act of developing said second component comprises developing a Java MediaHandler. However, in the same field of processing data, Patki discloses Java Media Manager and



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Handler (Figure 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate Java Media Handler of Patki into processing data of Curran to support a wider range of data processing and type.

Regarding claims 16, 41 and 67, Curran and in view of Patki disclose the method of Claim 15, Curran further discloses wherein said act of developing said third component comprises developing a controller adapted to access said first component to cause at least one message to be sent between said second node and said first node, said at least one message causing at least one corresponding function to be executed (p. 948, last 7 lines; exhibiting communication protocol control for execution).

Regarding claims 55-56, see the discussion of claim 13.

Regarding claims 56-60, see the discussions of claims 14-16 and 20, respectively, for the same reasons of rejections.

**Claims 22-24 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curran in view of Patki, and in further view of Logston et al. (US. Pat. 6,941,341), hereinafter Logston.**

Regarding claims 22 and 47, Curran and in view of Patki disclose the CPE of Claim 21 with java-base middleware, but do not explicitly disclose CPE comprises a DSTB with Java-based middleware, and at least one of said first, second and third components of said at least one software application comprises at least one class and at least one interface disposed within the application directory hierarchy. However, in the same field of endeavor, Logston discloses CPE comprises a DSTB (col. 9, lines 40-45) with Java-based middleware, and at least one of said first, second and third

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components of said at least one software application comprises at least one class and at least one interface disposed within the application directory hierarchy (Figure 18; server hierarchy). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate disclosures by Logston into Curran with a motivation of able to analyze and determine channel availability and states of each channel in according with active/inactive clients' set-top boxes.

Regarding claims 23 and 48, Logston further discloses the CPE of Claim 22, wherein said CPE is adapted to: receive said at least one application over said network; and subsequent to said receipt, launch said at least one application to configure at least one path to said at least one component (Figure 10; communication path).

Regarding claims 24 and 49, the CPE of Claim 23, Logston discloses wherein said CPE further comprises a plurality of applications, said plurality of other applications being enabled to access said at least one component via at least one of said at least one configured paths (col. 16, lines 45-53).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan Khanh Phan whose telephone number is (571)270-3047. The examiner can normally be reached on 4/5/9.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on 571-272-1834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TKP

/Hung T Vy/

Primary Examiner, Art Unit 2163